IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.177 OF 2004

Malkana Joti Parit ... Petitioner

v/s

Kallapa Joti Parit and others ... Respondents

Mr M.R. Suryavanshi for Petitioner.

None for Respondents.

CORAM : D.K. DESHMUKH J.

DATE : 15TH JUNE 2005.

P.C. :-

1. Notice of final disposal was issued by this Court in this petition by order dated 15th January 2004. The respondents have been served, they are not appearing. Heard learned counsel for the petitioner. By this petition, the petitioner challenges order dated 19th February 1999 passed by the Trial Court rejecting an application filed by the plaintiff - petitioner for amendment of the plaint. The order impugned in the petition is as under :-

> "Heard both sides. It is found that proposed amendment will not cause any injustice to other side.
>
> No new case has been established. However, upon perusal of document, it is not pertaining to the property which plaintiff wants to add by way of the amendment. So it is rejected."

. Perusal of the order shows that the learned Trial Judge holds that the proposed amendment will not cause injustice to the other side. He also holds that new case is not made out by the amendment. However, he

rejects the application for amendment because he finds after perusing the evidence that the documents are not pertaining to the property in respect of which the amendment relates. In my opinion, documents are to be perused by the Court when evidence is to be seen. When the Court is considering application for amendment, it cannot consider evidence to find out whether the plaintiff would be able to prove the pleadings. The approach of the Trial Court is obviously wrong. The impugned order therefore is liable to be set aside. It is accordingly set aside. The application filed by the plaintiff - petitioner for amendment in the plaint dated 13th January 1997, copy of which is at Exh.'B' to the present petition, is granted. The defendants are also granted leave to carry out consequential amendment in the written statement. Rule is made absolute accordingly. No order as to costs.

. Parties to act on the copy of this order duly authenticated by the Sheristedar / Personal Secretary of this Court as true copy.

. Certified copy expedited.